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No. 70

In the Supreme Court of the United States

October Term, 1962

KENNETH J. TOBIN AND MARGUERITE R. TOBIN,
PETITIONERS

v.

LAURIE W. TOBLERGE, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

ARCHIBALD COX,
Solicitor General,
Department of Justice,
Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1962

No. 801

KENNETH J. TOBIN AND MARGUERITE R. TOBIN,
PETITIONERS

v.

LAURIE W. TOMLINSON, DISTRICT DIRECTOR OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

The question in this case is identical to that presented in *United States* v. *Zacks*, No. 632, this Term, in which certiorari was granted on January 14, 1963 (371 U.S. 961). As the government's petition for certiorari in the *Zacks* case emphasized, the decision below (following an earlier decision of the same court involving the same taxpayer but a different year, *Tobin* v. *United States*, 264 F. 2d 845) is in direct conflict with the Court of Claims's decision in the

6-1417-62

Zacks case. The government accordingly does not oppose the petition for certiorari.[1]

Respectfully submitted.

ARCHIBALD COX,
Solicitor General.

APRIL 1963.

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[1] The petition for certiorari, and our acquiescence, is limited to the question whether the formal claim for refund filed on October 11, 1956, was timely. The question whether certain correspondence prior to that date constituted a sufficient claim, decided adversely to petitioners by the court of appeals, is not presented here.